

1 PENELOPE A. PREVOLOS (CA SBN 87607)
(PPreovolos@mofo.com)
2 ANDREW D. MUHLBACH (CA SBN 175694)
(AMuhlbach@mofo.com)
3 HEATHER A. MOSER (CA SBN 212686)
(HMoser@mofo.com)
4 MORRISON & FOERSTER LLP
425 Market Street, 32nd Floor
5 San Francisco, California 94105-2482
Telephone: 415.268.7000
6 Facsimile: 415.268.7522

7 Attorneys for Defendant
APPLE COMPUTER, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 *E-FILED - 2/6/06*

13 *In re: Apple iPod nano Litigation*

Case No. C-05-04244 RMW

14 **CLASS ACTION**

15 This Case is Consolidated With:

16 All Cases.

17 **JOINT STIPULATION AND**
[PROPOSED] ORDER GRANTING
DEFENDANT APPLE
COMPUTER, INC.'S MOTION TO
STAY PROCEEDINGS

18 Date: February 17, 2006
19 Time: 9:00 a.m.
Place: Courtroom No. 6, 4th Floor
The Honorable Ronald M. Whyte

20 Date Action Filed: October 25, 2005

1 Plaintiffs James M. Wimmer, Jason Moschella, Samuel R. Allred, Hurr Baqri, David
 2 Singer, Ben Jennings, Roberto Armando, Islas Durand (collectively "plaintiffs") and defendant
 3 Apple Computer, Inc. ("Apple") (collectively the "parties") hereby submit the following
 4 stipulation to a stay until further order of this Court following a determination by the Judicial
 5 Panel on Multidistrict Litigation of Apple's pending Motion for Transfer and Consolidation of
 6 Apple iPod nano Litigation Pursuant to 28 U.S.C. § 1407.

7 RECITALS AND STIPULATION

8 **WHEREAS**, the following three actions were filed in the Northern District of California
 9 against Apple, all of which seek similar relief on behalf of a slightly variant putative classes of
 10 iPod nano purchasers: (1) on October 19, 2005, plaintiff Jason Tomczak filed *Tomczak v. Apple*
 11 *Computer, Inc.*, No. C-05-04244-RS, and, on October 25, 2005, plaintiff Tomczak filed a first
 12 amended complaint substituting plaintiff James Wimmer, *Wimmer v. Apple Computer, Inc.*, No.
 13 C-05-04244 ("*Wimmer*"); (2) on October 26, 2005, plaintiffs Jason Moschella, Samuel R. Allred,
 14 Hurr Baqri, and David Singer filed *Moschella v. Apple Computer, Inc.*, No. C-05-04372-RS
 15 ("*Moschella*"); and (3) on November 4, 2005, plaintiffs Ben Jennings, Roberto Armando, and
 16 Islas Durand filed *Jennings v. Apple Computer, Inc.*, No. C-05-04520-JW ("*Jennings*");

17 **WHEREAS**, on January 11, 2006, this Court entered Proposed Case Management Order
 18 No. 1, which coordinated *Wimmer*, *Moschella*, and *Jennings* for pretrial purposes (collectively
 19 "*Apple iPod nano Litigation*");

20 **WHEREAS**, the following five actions were filed against Apple in district courts around
 21 the country, all of which seek similar relief on behalf of a putative classes of iPod nano
 22 purchasers: (1) on October 31, 2005, plaintiff Eli Kahan filed a putative class action against
 23 Apple in the Southern District of New York entitled, *Kahan v. Apple Computer, Inc.*, No. 05-CV-
 24 9251 ("*Kahan*"); (2) on November 23, 2005, plaintiff Leonard Rappel filed a putative class action
 25 against Apple in the District of New Jersey entitled, *Rappel v. Apple Computer, Inc.*, No. 05-
 26 5622-SRC ("*Rappel*"); (3) on December 7, 2005, plaintiff Emily Mayo filed a putative class
 27 action against Apple in the Middle District of Louisiana entitled, *Mayo v. Apple Computer, Inc.*,
 28 No. 05-CV-1382-JJB-DLD ("*Mayo*"); (4) on December 22, 2005, plaintiff John Valencia filed a

1 putative class action against Apple in the Northern District of California entitled, *Valencia v.*
 2 *Apple Computer, Inc.*, No. C-05-05319-HRL ("*Valencia*"); and (5) on December 29, 2005,
 3 plaintiff Danny Williamson filed a putative class action against Apple in the Middle District of
 4 Louisiana entitled, *Williamson v. Apple Computer, Inc.*, No. 05-CV-1438-RET-CN
 5 ("*Williamson*");

6 **WHEREAS**, Apple filed a Motion for Transfer and Consolidation of Apple iPod nano
 7 Litigation Pursuant to 28 U.S.C. § 1407 ("Motion to Transfer") with the Judicial Panel on
 8 Multidistrict Litigation to request that all pending putative class actions be consolidated and
 9 transferred to this Court;

10 **WHEREAS**, Apple's unopposed Motion to Transfer is currently pending before the
 11 Judicial Panel on Multidistrict Litigation; and

12 **WHEREAS**, the parties agree that a stay of all proceedings in the *Apple iPod nano*
 13 *Litigation* is warranted until Apple's Motion to Transfer is decided by the Judicial Panel on
 14 Multidistrict Litigation.

15 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties through their
 16 respective undersigned counsel of record, subject to the approval of the Court, the following:

- 17 1. Apple's currently pending Motion to Stay Proceedings shall be withdrawn and the
 18 February 17, 2006 hearing taken off calendar; and
- 19 2. A stay order shall be entered on the Court's docket pending further order of this
 20 Court. The Parties agree to immediately notify the Court of the decision of the Judicial Panel on
 21 Multidistrict Litigation with respect to Apple's pending Motion for Transfer and Consolidation of
 22 Apple iPod nano Litigation Pursuant to 28 U.S.C. § 1407.

1 Dated: January __, 2006

LEE M. GORDON
ELAINE T. BYSZEWSKI
HAGENS BERMAN SOBOL SHAPIRO LLP

STEVEN W. BERMAN
HAGENS BERMAN SOBOL SHAPIRO LLP

By: Elaine T. Byszewski

Attorneys for Plaintiffs
JAMES M. WIMMER, JASON
MOSCHELLA, SAMUEL R.
ALLRED, HURR BAQRI, DAVID
SINGER, BEN JENNINGS,
ROBERTO ARMANDO, and ISLAS
DURAND

11 Dated: January 25, 2006

PENELOPE A. PREOVOLOS
ANDREW D. MUHLBACH
HEATHER A. MOSER
MORRISON & FOERSTER LLP

By: /s/ Andrew D. Muhlbach
Andrew D. Muhlbach

Attorneys for Defendant
APPLE COMPUTER, INC.

ORDER

All actions coordinated as the *Apple iPod nano Litigation* in this Court are stayed until further order of this Court following a determination by the Judicial Panel on Multidistrict Litigation of Apple's pending Motion for Transfer and Consolidation of Apple iPod nano Litigation Pursuant to 28 U.S.C. § 1407. The parties shall immediately notify the Court of any decision by the Judicial Panel of Multidistrict Litigation on Apple's pending Motion for Transfer and Consolidation of Apple iPod nano Litigation Pursuant to 28 U.S.C. § 1407.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 2/6/06

/S/ RONALD M. WHYTE

THE HONORABLE RONALD M. WHYTE
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE BY OVERNIGHT DELIVERY
(Fed. R. Civ. Proc. Rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years; and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited in a box or other facility regularly maintained by UPS or delivered to an authorized courier or driver authorized by UPS to receive documents on the same date that it is placed at Morrison & Foerster for collection.

I further declare that on the date hereof I served a copy of:

**JOINT STIPULATION AND [PROPOSED] ORDER GRANTING DEFENDANT
APPLE COMPUTER, INC.'S MOTION TO STAY PROCEEDINGS**

on the following by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows for collection by UPS at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practice.

Steven W. Berman
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

I declare under penalty of perjury that the above is true and correct.

Executed at San Francisco, California, this 25th day of January, 2006.

Carol J. Peplinski
(typed)

/s/ Carol J. Peplinski
(signature)

ATTESTATION OF E-FILED SIGNATURE

I, Andrew D. Muhlbach, am the ECF User whose ID and password are being used to file this Proof of Service. In compliance with General Order 45, X.B, I hereby attest that Carol J. Peplinski has read and approved this Proof of Service and consents to its filing in this action.

Dated: January 25, 2006

MORRISON & FOERSTER LLP

/s/ Andrew D. Muhlbach
Andrew D. Muhlbach